

**Permit Implementation Regulations
Draft Response to Comments Received During 60-Day Comment Period
(April 7, 2006 through June 6, 2006)
Major Issues**

This informal document is being made available on the Regulatory Development Website to provide interested parties an advance opportunity to review staff's initial analysis and draft response to comments that were provided on some of the major issues raised regarding the proposed regulations during the 60 day comment period. This information and more will be provided as part of the agenda item scheduled to be presented to the Permitting and Enforcement Committee on September 5, 2006.

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I. CHANGE IN DESIGN OR OPERATION

Minor Changes

Comments:

1. Section 21620(a)(1) - Received comments to support lists, support lists as edited, support lists and allow EA to determine by using criteria, delete lists, delete lists or edit if must retain, delete lists and use as examples in advisory, and delete lists and allow EA to determine by using criteria.
2. Section 21620(a)(1)(E) - Commenters said "reasonable time" for the operator to notify the EA of the minor change being made needs to be defined as 15 days or 30 days.
3. Section 21620(a)(1)(D) - Commenter said criteria should be added that says the EA has been consulted and agrees that the change will not require a permit revision, a permit modification, or an amendment to the RFI.

Approach: Staff suggests 3 options, two of which would not include the minor change lists and one which would include a list. Staff's preferred option is Option A (see "Rationale" below for further explanation).

Option A: Delete minor change lists, edit and add criteria, and provide in an EA advisory a list with examples of minor changes

1. Delete the minor change lists (Section 21620(a)(1)(D)).
2. Retain the criteria (A, B, C, and E in Section 21620(a)(1)) that must be met by an operator before an operator can implement a minor change without EA review and approval. The criteria, itemized below, are the same as what's currently proposed in the regulations with the addition of two edits to item E: i) Add a time certain for the operator to send the notice to the EA of within 30 days after making the change; and ii) add that if the EA finds the change does not meet the criteria for minor change, the EA would need to provide a finding in writing to the operator as documented in an inspection report on other document as to why the change did not qualify as a minor change.
 - A. Change is subject to LEA authority
 - B. Change is consistent with State minimum standards
 - C. Change is consistent with the terms and conditions in the current solid waste facilities permit
 - E. The operator shall notice the EA in writing at the time of the change or within "30 days" after the change, and if the EA later finds the change does not meet the criteria for minor change, "the EA shall provide a finding to the operator in writing as to why the change did not qualify as a minor change;" the EA may require the operator to comply with all applicable requirements.
3. Add a new criterion "D" to the minor change criteria that requires a change to also be consistent with the current RFI before it can be implemented by the operator without EA review and approval:
 - D. The change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600.
4. An edited version of the lists deleted from Section 21620(a)(1)(D) will be included as examples in an EA advisory on minor changes.
5. Don't require the operator to consult with the EA and seek agreement prior to making the change.

Option B: Retain edited version of minor change lists, add and edit criteria

1. Retain an edited version of the minor change list (Section 21620(a)(1)(D)) (see proposed changes under Option B, beginning on page 7).
2. Add to Section 21620(a)(1)(D) a new criterion that requires a change to also be consistent with the current RFI before it can be implemented by the operator without EA review and approval:
 - D. The change “does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600” and is listed below.
3. Add to Section 21620(a)(1)(E):
 1. Add a time certain for the operator to send the notice to the EA of within 30 days after making the change.
 2. Add that if the EA finds the change does not meet the criteria for minor change, the EA would need to provide a finding in writing to the operator as documented in an inspection report on other document as to why the change did not qualify as a minor change.
4. Don't require the operator to consult with the EA and seek agreement prior to making the change.

Option C: Same as Option A, but include edited minor change lists as “Note,” as opposed to providing separately in EA advisory

1. Same as Option A, but retain an edited version of the lists as a "Note" in Section 21620 as examples of what could meet the criteria (A-E).

Rationale:

Minor change list - Based on the comments we have received, Board staff's preferred option is Option A, which includes deletion of the minor change lists in Section 21620(a)(1)(D), but retaining the criteria that must be in place before an operator can implement a minor change without EA review and approval. The concern expressed by most of the EAs and about ½ of the operators commenting, and shared by staff with the proposed lists is they identify items that would always be considered minor in every situation and thus remove flexibility to address site specific situations. Any of the proposed items listed could be construed as major or minor depending on the type of operation or facility (for example, some changes on the list would not be applicable to transfer/processing stations, but would be applicable to landfills), existing language in a facility's supporting documentation, or an urban versus rural environment. If the lists were “all-inclusive,” any and all proposed minor change items would have to be consistent throughout the state, which would not allow discretion to deal with site-specific issues. Another problematic aspect to the lists is that they cannot be all-inclusive in listing all of the changes that qualify as minor changes; there will always be another item that should/could be on the list, but is not. Staff concludes that a proposed change is best handled relative to the review and approval process based on the site-specific issues.

At the same time, retaining and enhancing the criteria clearly points out that there are changes that can occur at a site without EA review and approval. Changes outside the EA's authority would not qualify for review or approval. Changes that are consistent with the permit, report of facility information, and State minimum standards could be implemented without review or approval by the EA. Deletion of the lists allows operators to exercise judgment on classifying a change as minor by meeting the criteria provided in Section 21620(a)(1). There will remain a requirement to send written notice to the EA regarding the implemented change. If the EA disagrees with how the criteria were applied, it will be required to indicate to the operator in writing how the criteria should have been applied and what process should be followed. The proposed minor change lists deleted in Section 21620(a)(1)(D) would be used as examples of minor changes in an EA advisory, which would be further broken into examples of specific facility types. The timeframe for drafting the advisory is proposed for right after the Board adopts the regulations.

Minor change criteria – Staff has added a new criterion to the list of criteria in Section 21620(a)(1) to correct an oversight in the proposed regulations by requiring that a change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600. Staff also agrees with adding a time certain in Section 21620(a)(1)(E) for operators to send written notice to the EA about implemented minor changes. 30 days is a reasonable amount of time for noticing the EA and coincides with the timing of monthly inspections by the EA. The EA would be able to accumulate the minor change notices and, if appropriate, update the RFI at the next RFI update or as part of a facility's 5-year review. The notice by the operator continues to be for informational purposes and is not subject to EA compliance measures.

Additional points - Requiring the operator to consult with the EA prior to implementing a minor change is not consistent with what was discussed during the informal rulemaking process, which is to allow operators to make minor changes that meet criteria specified in Section 21620(a)(1) prior to notifying the EA. These are supposed to be changes that are so minor that EA review and approval is not needed in order for the operator to make the change. Plus, under Option A the operator is required to notify the EA of the change within 30 days of making the change and if the EA finds the change is not minor, the operator can be required to comply with all applicable requirements; however, the EA would need to provide a written finding to the operator as documented in an inspection report or other documentation as to why the change did not qualify as a minor change. The idea of operators giving LEAs a heads-up about potential upcoming changes is good and would be promoted in an LEA advisory on minor change.

Draft Regulations: suggested changes for the 15 day comment period are in double underline and double strike out.

OPTION A

Section 21620(a) Minor Changes

(1) Minor Changes

An operator may implement a minor change without EA review and approval if all of the following criteria are met:

(A) the change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act;

(B) the change is consistent with State minimum standards pursuant to Chapter 3 of this subdivision or applicable minimum standards in Title 14 (commencing with §17200), and including financial assurances and operating liability criteria pursuant to Chapter 6 of this subdivision if applicable;

(C) the change is consistent with the terms and conditions in the current solid waste facilities permit; and

(D) the change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600. is listed below:

~~**Alternative 1 Minor Change List contains proposed changes that were identified and fully supported by a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list—Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?**~~

~~(i) Correction of typographical errors in any documents/documentation submitted by the owner or operator.~~

~~(ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees.~~

~~(iii) Changes in any name and phone number or other contact information that does not include a change of the owner or operator.~~

~~(iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality.~~

~~(v) Replace equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment.~~

~~(vi) Changes in procedures for cleaning or decontamination of facility equipment or structures.~~

~~(vii) Changes in tanks used for storage of materials without a change in location and consistent with existing design and operation.~~

~~(viii) Changes in the rental company or location of where the back-up equipment may be sought.~~

~~**Alternative 2 Optional Minor Change List contains additional changes that could be added to the Minor Change List shown in Alternative 1, above. These additional changes were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider if any of the changes listed below should be moved as is or edited to the Minor Change List, or dropped from further consideration.**~~

~~(i) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.~~

~~(ii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and will not result in a change to the design and/or operation that are within the LEA's authority.~~

~~(iii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and will not result in a change to the design and/or operation.~~

~~(iv) Changes in containers used for storage of materials that does not interfere with the design and operation of the facility.~~

~~(v) Change in name only of owner/operator.~~

~~(vi) Change in narrative information (e.g., background information) outside the permitted boundary.~~

~~(vii) Change to facility signage wording consistent with State minimum standards.~~

~~(viii) Changes to improve personnel protective equipment and other safety procedures; needs to be consistent with OSHA.~~

~~(ix) Changes to traffic patterns on site that do not affect off-site traffic.~~

~~(x) Adjacent land use map.~~

~~(xi) Change in location of facility records.~~

~~(xii) Change in designated enforcement agency.~~

~~(xiii) Changes in name, address, or phone number of contact in post-closure plan.~~

~~(xiv) Changes to equipment maintenance operations associated with the operation of the facility that will not change design or operation.~~

~~(xv) Purchase of property adjacent to the facility if not used for solid waste operations.~~

~~(xvi) Updated changes to documents that are included by reference in a permit or RFI.~~

~~(xvii) Regulation re-numbering as referenced in RFI.~~

~~(E) the operator shall notice the EA at the time of the change or within 30 days a reasonable time after the change has been made, and the following provisions shall apply:~~

~~(i) the notice shall be in writing and delivered to the EA by regular mail, email, or fax;~~

~~(ii) the operator shall identify the minor change in the notice and indicate the effective date of the change;~~

~~(iii) the notice is for informational purposes only and is not subject to EA compliance measures; however, if the EA determines at a later date that the change does not meet the criteria for minor change, the EA shall provide a finding to the operator in writing as to why the change did not qualify as a minor change; the EA may require the operator to comply with all applicable requirements; and~~

~~(iv) During the regular 5-year permit review, the EA shall review the minor change notices and determine which should be incorporated into the RFI.~~

OPTION B

Section 21620(a) Minor Changes

(1) Minor Changes

An operator may implement a minor change without EA review and approval if all of the following criteria are met:

(A) the change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act;

(B) the change is consistent with State minimum standards pursuant to Chapter 3 of this subdivision or applicable minimum standards in Title 14 (commencing with §17200), and including financial assurances and operating liability criteria pursuant to Chapter 6 of this subdivision if applicable;

(C) the change is consistent with the terms and conditions in the current solid waste facilities permit; and

(D) the change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600 and is listed below:

~~Alternative 1 Minor Change List contains proposed changes that were identified and fully supported by a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list. Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?~~

(i) Correction of typographical errors in any documents/documentation submitted by the owner or operator.

(ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees.

(iii) Changes in any name and phone number, mailing address, or other contact information that does not include a change of the owner or operator.

(iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality.

(v) Replace equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment.

(vi) Changes in procedures for cleaning or decontamination of facility equipment or structures.

(vii) Changes in tanks used for storage of materials utilized as part of the operation of the facility such as fuel, motor oil, and water without a change in location ~~and consistent with existing design and operation.~~

(viii) Changes in the rental company or location of where the back-up equipment may be sought.

~~Alternative 2 Optional Minor Change List contains additional changes that could be added to the Minor Change List shown in Alternative 1, above. These additional changes were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider if any of the changes listed below should be moved as is or edited to the Minor Change List, or dropped from further consideration.~~

(ix) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.

~~(#x)~~ Updated changes to other regulatory agency documents that are included by reference in a RFI only ~~and will not result in a change to the design and/or operation that are within the LEA's authority.~~

~~(#xi)~~ Updated changes to other regulatory agency documents that are included by reference in a RFI only ~~and will not result in a change to the design and/or operation.~~

~~(#xii)~~ Changes in containers used for temporary storage of materials separated for recycling ~~that does not interfere with the design and operation of the facility.~~

~~(#xiii)~~ Change in name only of owner/operator.

~~(#xiii)~~ Change in narrative information (e.g., background information) outside the permitted boundary.

~~(#xiv)~~ Change to facility signage wording ~~consistent with State minimum standards.~~

~~(#xv)~~ Changes to improve personnel protective equipment and other safety procedures; ~~needs to be consistent with OSHA.~~

~~(#xvi)~~ Changes to traffic patterns on site that do not affect off-site traffic, and/or adjacent improved properties.

(xvii) Adjacent land use map.

(xviii) Change in location of facility records.

~~(xix)~~ Change in designated enforcement agency.

(xix) Changes in name, address, or phone number of contact in post-closure plan.

~~(#xx)~~ Changes to equipment maintenance operations associated with the operation of the facility ~~that will not change design or operation.~~

~~(#xxi)~~ Purchase Acquisition of property adjacent to the facility if not used for solid waste activities ~~operations.~~

(xxii) Updated changes to documents that are included by reference in a permit or RFI.

(xxiii) Regulation re-numbering as referenced in RFI.

(E) the operator shall notice the EA at the time of the change or within 30 days a reasonable time after the change has been made, and the following provisions shall apply:

(i) the notice shall be in writing and delivered to the EA by regular mail, email, or fax;

(ii) the operator shall identify the minor change in the notice and indicate the effective date of the change;

(iii) the notice is for informational purposes only and is not subject to EA compliance measures; however, if the EA determines at a later date that the change does not meet the criteria for minor change, the EA shall provide a finding to the operator in writing as to why the change did not qualify as a minor change; the EA may require the operator to comply with all applicable requirements; and

(iv) During the regular 5-year permit review, the EA shall review the minor change notices and determine which should be incorporated into the RFI.

OPTION C

Section 21620(a) Minor Changes

(1) Minor Changes

An operator may implement a minor change without EA review and approval if all of the following criteria are met:

(A) the change is subject to the authority of the EA acting pursuant to the Integrated Waste Management Act or regulations promulgated under such Act;

(B) the change is consistent with State minimum standards pursuant to Chapter 3 of this subdivision or applicable minimum standards in Title 14 (commencing with §17200), and including financial assurances and operating liability criteria pursuant to Chapter 6 of this subdivision if applicable;

(C) the change is consistent with the terms and conditions in the current solid waste facilities permit; and

(D) the change does not conflict with the design and operation of the facility as provided in the current RFI pursuant to Section 21600. is listed below:

~~**Alternative 1 Minor Change List contains proposed changes that were identified and fully supported by a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list—Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?**~~

~~(i) Correction of typographical errors in any documents/documentation submitted by the owner or operator;~~

~~(ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees;~~

~~(iii) Changes in any name and phone number or other contact information that does not include a change of the owner or operator;~~

~~(iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality;~~

~~(v) Replace equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment;~~

~~(vi) Changes in procedures for cleaning or decontamination of facility equipment or structures;~~

~~(vii) Changes in tanks used for storage of materials without a change in location and consistent with existing design and operation;~~

~~(viii) Changes in the rental company or location of where the back-up equipment may be sought;~~

~~**Alternative 2 Optional Minor Change List contains additional changes that could be added to the Minor Change List shown in Alternative 1, above. These additional changes were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider if any of the changes listed below should be moved as is or edited to the Minor Change List, or dropped from further consideration.**~~

~~(i) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point;~~

~~(ii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and will not result in a change to the design and/or operation that are within the LEA's authority;~~

~~(iii) Updated changes to other regulatory agency documents that are included by reference in a RFI only and will not result in a change to the design and/or operation;~~

~~(iv) Changes in containers used for storage of materials that does not interfere with the design and operation of the facility;~~

~~(v) Change in name only of owner/operator;~~

~~(vi) Change in narrative information (e.g., background information) outside the permitted boundary;~~

~~(vii) Change to facility signage wording consistent with State minimum standards;~~

~~(viii) Changes to improve personnel protective equipment and other safety procedures; needs to be consistent with OSHA;~~

~~(ix) Changes to traffic patterns on site that do not affect off-site traffic;~~

~~(x) Adjacent land use map;~~

~~(xi) Change in location of facility records;~~

~~(xii) Change in designated enforcement agency;~~

~~(xiii) Changes in name, address, or phone number of contact in post-closure plan;~~

~~(xiv) Changes to equipment maintenance operations associated with the operation of the facility that will not change design or operation;~~

~~(xv) Purchase of property adjacent to the facility if not used for solid waste operations;~~

~~(xvi) Updated changes to documents that are included by reference in a permit or RFI;~~

~~(xvii) Regulation re-numbering as referenced in RFI;~~

~~(E) the operator shall notice the EA at the time of the change or within 30 days a reasonable time after the change has been made, and the following provisions shall apply:~~

~~(i) the notice shall be in writing and delivered to the EA by regular mail, email, or fax;~~

~~(ii) the operator shall identify the minor change in the notice and indicate the effective date of the change;~~

~~(iii) the notice is for informational purposes only and is not subject to EA compliance measures; however, if the EA determines at a later date that the change does not meet the criteria for minor change, the EA shall provide a finding to the operator in writing as to why the change did not qualify as a minor change; the EA may require the operator to comply with all applicable requirements; and~~

~~(iv) During the regular 5-year permit review, the EA shall review the minor change notices and determine which should be incorporated into the RFI.~~

Note: changes relative to only those items described in the RFI and not addressed in the current solid waste facilities permit as written by the LEA could be requested, after consultation, through an application pursuant to Section 21666. Changes that could meet the criteria in subsection (a)(1) - Minor change include the following:

- (i) Correction of typographical errors in any documents/documentation submitted by the owner or operator.
- (ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees.
- (iii) Changes in any name and phone number, mailing address, or other contact information that does not include a change of the owner or operator.
- (iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality.
- (v) Replace equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment.
- (vi) Changes in procedures for cleaning or decontamination of facility equipment or structures.
- (vii) Changes in tanks used for storage of materials utilized as part of the operation of the facility such as fuel, motor oil, and water without a change in location.
- (viii) Changes in the rental company or location of where the back-up equipment may be sought.
- (ix) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.
- (x) Updated changes to other regulatory agency documents that are included by reference in a RFI only.
- (xi) Updated changes to other regulatory agency documents that are included by reference in a RFI only.
- (xii) Changes in containers used for temporary storage of materials separated for recycling.
- (xiii) Change in narrative information (e.g., background information) outside the permitted boundary.
- (xiv) Change to facility signage wording.
- (xv) Changes to improve personnel protective equipment and other safety procedures.
- (xvi) Changes to traffic patterns on site that do not affect off-site traffic, and/or adjacent improved properties.
- (xvii) Adjacent land use map.
- (xviii) Change in location of facility records.
- (xix) Changes in name, address, or phone number of contact in post-closure plan.
- (xx) Changes to equipment maintenance operations associated with the operation of the facility.
- (xxi) Acquisition of property adjacent to the facility if not used for solid waste activities.
- (xxii) Updated changes to documents that are included by reference in a permit or RFI.
- (xxiii) Regulation re-numbering as referenced in RFI.

RFI Amendments

Comment:

1. Section 21665(c)(1) – Commenter said Subsection 21665(c)(1) should be modified to allow proposed changes to be processed as RFI amendments if a subsequent initial study and Negative Declaration find no project revisions or mitigations are necessary to find no significant impacts to the environment.

Approach:

1. Don't change the criterion in Section 21665(c)(1) to allow proposed changes to be processed as RFI amendments when a subsequent initial study needs to be prepared and a Negative Declaration adopted.

Rationale:

The request to modify the proposed regulations in Section 21665(c)(1) to allow proposed changes to be processed as RFI amendments when a subsequent initial study needs to be prepared and a Negative Declaration adopted by the LEA is outside the scope of the regulatory package. The proposed regulations do not make any changes relative to CEQA. Current regulations indicate that for projects that come to the EA and the EA determines that the application is not consistent with an existing CEQA document, then the application cannot be processed as an RFI amendment. It is not within the scope or intent of the regulations to change these existing requirements. If the EA determines a need to do a new CEQA document (because it found the RFI amendment to be inconsistent with existing CEQA document(s)), then the EA will be required to reject the application and require the operator to submit an application for a permit modification or revision. However, an operator could choose to withdraw an application and later submit it with CEQA documentation that is consistent with the application, and allow the EA to process the change as an RFI amendment process.

Draft Regulations:

Section 21665(c)(1) RFI Amendment Criterion Regarding CEQA

No change to the criterion for an RFI amendment in Section 21665(c)(1).

Modified Permits

Comments:

1. Section 21563(d)(5) - Commenters said that the definition for “nonmaterial change” should be changed to clarify that the physical change is “substantial” and would “materially” alter the approved design or operation of the facility.
2. Sections 21663(a) and 21685(c) - Commenters said the Executive Director should not be allowed to concur on modified permits, which should continue to go to the full Board for concurrence and always involve public notice and an opportunity to comment prior to Board action.
3. Section 21685(c) - Commenters said the Executive Director’s decision should be something that can be appealed to the Board.

Approach:

1. Leave the definition for “nonmaterial change” as is, but clarify that the definition only applies to permit modifications.
2. Continue to allow the Executive Director to concur on modified permits and do not add language that would make the Executive Director’s decision something that could be appealed to the Board.
3. Add a requirement that the Executive Director would report to the Board at its next regularly scheduled meeting or via a memo on the concurrence or denial of modified permits, and a modified permit list would be posted on Board’s web site or agenda.

Rationale:

Nonmaterial change definition - There is no need to change the definition for “nonmaterial change” in Section 21563(d)(5) as suggested by the commenters, since it is staff’s view that their concerns are already addressed in the proposed regulations. As currently proposed in the regulations, there are two ways a proposed change that requires the permit to be changed can qualify as a modified permit. First, a change can qualify if it is “nonmaterial” and would not result in any physical change that would alter the approved design or operation of the facility (Section 21665(d)(1)). An example of a nonmaterial change is where the permit needs to be changed to include new information, but there is no change to the design and operation at the facility (e.g., the EA updates the reference to a newly revised waste discharge requirement (WDR) in the permit issued by the EA). This is a quick way a change can qualify as a permit modification. Second, a change can qualify for a modified permit if it does result in a physical change to the existing design and operation of the facility (i.e., it is not a “nonmaterial” change), but the EA sees no need to add to the existing permit further restrictions, mitigations, or conditions to protect public health, public safety, ensure compliance with SMS, and to protect the environment (Section 21665(d)(2)). This means that as long as a change that requires the permit to be changed (be it a physical change or not) does not require additional restrictions, mitigation, or conditions to be added to the permit by the EA, it can qualify as a permit modification. Hence, the edits proposed by the commenters to clarify that the physical change is “substantial” and would “materially” alter the approved design or operation of the facility, are not necessary since they are already covered under Section 21665(d)(2). If the EA does see the need to add a condition, restriction, etc. to the permit to adequately protect public health, public safety, ensure compliance with state minimum standards, and to protect the environment, then the change is determined to be significant and the permit needs to be revised.

Executive Director concurrence - The Executive Director should continue to be allowed to concur on modified permits as specified in Sections 21663(a) and 21685(c). The Executive Director has already been delegated by the Board to concur on non-significant permit modifications. PRC Section 40430 allows the Board to delegate any power, duty, purpose, function and jurisdiction which it deems appropriate to the Executive Director. The Board has delegated to the Executive Director in its “Delegation of Authority” Resolution, January 11, 1995, the approval of non-significant modifications to solid waste facilities permits, while retaining approval authority on permit revisions.

Executive Director decision - Since the Executive Director would be acting on behalf of the Board, the Executive Director would be making the same assessment as the Board, i.e., if the permit meets State minimum standards (and the other requirements of PRC 44009), then the Executive Director concurs. Decisions made by the Executive Director should not be something that can be appealed to the Board, but can continue to be addressed through litigation, just as Board decisions are subject to judicial review now. This is similar to the process for issuing stipulated agreements that allow a temporary waiver from specific terms and conditions of a solid waste facilities permit during temporary emergencies. The EA issues a stipulated agreement, sends it to the Executive Director for review, who may add conditions, limits, suspend, or terminate the stipulated agreement. Actions taken by the Executive Director are not something that can be formally appealed to the Board.

Also, similar to the stipulated agreement process, the Executive Director would be required to report to the Board at its next regularly scheduled meeting on the concurrence or denial of modified permits, as currently required for stipulated agreements, or could report via a memo. Lastly, a notice of the issuance of a modified permit would be posted on the Board's web page, similar to the required posting of stipulated agreements.

The public can appeal the issuance of the permit by the EA to a hearing panel or hearing officer if the EA fails to comply with the Integrated Waste Management Act in issuing the permit. This appeal could be appealed through the appeal process up to the Board for a decision.

Draft Regulations:

Section 21563(d) Definition of Nonmaterial Change

(5) "Nonmaterial change" means a change that would require a change to the solid waste facilities permit but would not result in any physical change that would alter the approved design or operation of the facility. The definition only applies to permit modifications as determined by the EA pursuant to §21665(d)(1).

Section 21663(a) Executive Director Concurrence on Modified Permits

No change to allow the Executive Director to concur on modified permits.

Section 21685(c) Executive Director Concurrence on Modified Permits Process

(c) The CIWMB for new and revised solid waste facilities permits, and the Executive Director of the CIWMB for modified solid waste facilities permits, shall either concur or object to the issuance of the proposed solid waste facilities permit within sixty days of receipt, except as authorized by Public Resources Code PRC-§44009, or by operator's consent. If the CIWMB or Executive Director objects to a proposed solid waste facilities permit, it shall accompany its objection with an explanation of its action, which may suggest conditions or other amendments that may render the proposed solid waste facilities permit unobjectionable; however, such suggestions do not constitute approval of the proposed solid waste facilities permit subject to incorporation of the suggestions. The Executive Director shall report to the CIWMB at its next regularly scheduled meeting or via a memo on the concurrence or denial of modified permits, and post this information on the CIWMB's web site or agenda.

Revised Permits – Significant Change Definition and Significant Change List

Comments:

1. Section 21563(d)(6) - Commenter requested that the definition for “significant change” be changed to say “The EA determines that the change itself would have or could have a significant adverse effect on human health or the environment, that will not be reduced to an insignificant level through compliance with applicable requirements of the PRC or CIWMB regulations; and the EA has identified additional feasible prohibitions, mitigations, conditions or other measures for consideration as permit requirements to reduce those adverse impacts.”
2. Section 21563(d)(6) – Commenter said the word “terms” should be added to the listing of “restrictions, prohibitions, mitigations, conditions...”
3. Section 21620(a)(4) - Received comments to support list, support list as edited, delete list, delete list or edit, and delete list and use as examples in advisory.

Approach: Staff suggests 3 options and recommends Option A (see “Rationale” below for further explanation).

Option A – Clarify definition, delete significant change list and use as examples in EA advisory

1. Broaden the term “significant change” to include the full reference pursuant to PRC Section 44004((i)(1) so Section 21563(d)(6) reads: “Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit” means...
2. Add to the “significant change” definition that “the definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR Sections 15000 et seq.”
3. Add to the “significant change” definition the word “terms” to the listing of “restrictions, prohibitions, mitigations, conditions...”
4. Delete the significant change list (Section 21620(a)(4)).
5. Later use the list deleted from Section 21620(a)(4) as examples in an EA advisory on significant change that the EA can refer to when evaluating site specific conditions at the facility.

Option B – Clarify definition and retain significant change list

1. Broaden the term “significant change” to include the full reference pursuant to PRC Section 44004((i)(1) so Section 21563(d)(6) reads: “Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit” means...
2. Add to the “significant change” definition that “the definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR Sections 15000 et seq.”
3. Add to the “significant change” definition the word “terms” to the listing of “restrictions, prohibitions, mitigations, conditions...”
4. Continue to include the significant change list (Section 21620(a)(4)).

Option C – Same as Option A, but include examples of significant change in Note rather than advisory

1. Broaden the term “significant change” to include the full reference pursuant to PRC Section 44004((i)(1) so Section 21563(d)(6) reads: “Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit” means...

2. Add to the “significant change” definition that “the definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR Sections 15000 et seq.”
3. Add to the “significant change” definition the word “terms” to the listing of “restrictions, prohibitions, mitigations, conditions...”
4. Delete the significant change list (Section 21620(a)(4)).
5. Add as examples of significant change to the Note at the end of the section.

Rationale:

Significant change definition - The use of the term "significant change" is only for the purpose of determining when a permit needs to be revised pursuant to PRC Section 44004(a) and not for the purpose of determining when a change in design or operation at a facility triggers compliance with CEQA. PRC Section 44004(i)(1) requires the Board to define the term “significant change in the design or operation of the solid waste facility that is authorized by the existing permit.” Broadening the term in Section 21563(d)(6) to include the full reference pursuant to PRC Section 44004(i)(1) and adding that “the definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR Sections 15000 et seq” should clarify the definition of “significant change....” and its relationship to CEQA.

Significant change list - Based on the comments received, staff recommends Option A, deleting the significant change list in Section 21620(a)(4). The concern with the proposed list is it identifies items that would always be considered significant and does not take into consideration site-specific issues. If the list was “all-inclusive,” any and all proposed significant change items would have to be consistent throughout the state with no question of discretion. This does not appear to be possible; the proposed items listed could be construed as significant or nonsignificant depending on the type of operation or facility, existing language in a facility’s supporting documentation, or an urban versus rural environment. Another problematic aspect to the list is it cannot be all-inclusive in listing all of the changes that qualify as significant changes; there will always be another item that should/could be on the list, but is not. Most commenters suggested that each proposed change must be treated on its own merit. This means deleting the list and having the EA use the decision tree in Section 21665 to determine if a proposed change is significant. The proposed significant change list deleted in Section 21620(a)(4) would be used in Option A as examples of significant changes in an EA advisory that the EA can refer to when evaluating site specific conditions at the facility. The list of examples would be further broken into specific facility types. The timeframe for drafting the advisory is proposed for right after the Board adopts the regulations.

OPTION A

Section 21563(d) Definition of Significant Change in the design or operation...

(6) "Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit" means a change in design or operation of a solid waste facility where the EA has determined pursuant to §21665 that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment. The definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR §15000 et seq.

Section 21620(a) Change in Operation: Revised Permit

(4) Revised Permit

All other changes in design or operation require a revised solid waste facilities permit pursuant to §21665(e). The operator shall submit an application package for a solid waste facilities permit revision pursuant to §21570 and which shall be processed by the EA pursuant to §21650.

~~***Alternative 3 Significant Change List contains proposed changes that were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list – Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?***~~

~~Notwithstanding anything to the contrary in §21665(c), the following changes in design or operation are considered significant and require an application for a revised permit:~~

~~(A) Increase in maximum amount of permitted tonnage of all waste received~~

~~(B) Increase in the facility's permitted acreage~~

~~(C) Increase in the permitted hours of operation~~

~~(D) For landfill, increase in permitted disposal footprint and/or permitted (final grade) the maximum overall height~~

OPTION B

Section 21563(d) Definition of Significant Change in the design or operation...

(6) "Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit" means a change in design or operation of a solid waste facility where the EA has determined pursuant to §21665 that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment. The definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR §15000 et seq.

Section 21620(a) Change in Operation: Revised Permit

(4) Revised Permit

All other changes in design or operation require a revised solid waste facilities permit pursuant to §21665(e). The operator shall submit an application package for a solid waste facilities permit revision pursuant to §21570 and which shall be processed by the EA pursuant to §21650.

~~Alternative 3 Significant Change List contains proposed changes that were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list — Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?~~

Notwithstanding anything to the contrary in §21665(e), the following changes in design or operation are considered significant and require an application for a revised permit:

(A) Increase in maximum amount of permitted tonnage of all waste received.

(B) Increase in the facility's permitted acreage.

(C) Increase in the permitted hours of operation.

(D) For landfill, increase in permitted disposal footprint and/or permitted (final grade) the maximum overall height.

OPTION C

Section 21563(d) Definition of Significant Change in the design or operation...

(6) "Significant Change in the design or operation of the solid waste facility that is not authorized by the existing permit" means a change in design or operation of a solid waste facility where the EA has determined pursuant to §21665 that the change is of such consequence that the solid waste facilities permit needs to include further restrictions, prohibitions, mitigations, terms, conditions or other measures to adequately protect public health, public safety, ensure compliance with State minimum standards or to protect the environment. The definition is only for purposes of determining when a permit needs to be revised and should not be utilized for making determinations relative to the California Environmental Quality Act (CEQA), Title 14, CCR §15000 et seq.

Section 21620(a) Change in Operation: Revised Permit

(4) Revised Permit

All other changes in design or operation require a revised solid waste facilities permit pursuant to §21665(e). The operator shall submit an application package for a solid waste facilities permit revision pursuant to §21570 and which shall be processed by the EA pursuant to §21650.

~~Alternative 3 Significant Change List contains proposed changes that were identified and supported by 60 percent of a workgroup consisting of stakeholders who actively participated in the informal regulatory process, including industry and EA representatives. Commenters should consider both the merit of the list concept as well as the content of the list. Should the changes listed below be kept on the list as is, edited, or deleted? Should new changes be added?~~

~~Notwithstanding anything to the contrary in §21665(e), the following changes in design or operation are considered significant and require an application for a revised permit:~~

~~(A) Increase in maximum amount of permitted tonnage of all waste received.~~

~~(B) Increase in the facility's permitted acreage.~~

~~(C) Increase in the permitted hours of operation.~~

~~(D) For landfill, increase in permitted disposal footprint and/or permitted (final grade) the maximum overall height.~~

Note: changes relative to only those items described in the RFI and not addressed in the current solid waste facilities permit as written by the LEA could be requested, after consultation, through an application pursuant to Section 21666. Changes that could meet the criteria in subsection (a)(1) - Minor change include the following:

(i) Correction of typographical errors in any documents/documentation submitted by the owner or operator.

(ii) Changes in the training plan that do not affect the type or decrease the amount of training given to employees.

(iii) Changes in any name and phone number, mailing address, or other contact information that does not include a change of the owner or operator.

(iv) Changes in emergency equipment (e.g., used for spill or release response) with the same functionally equivalent equipment at the same or higher level of quality.

(v) Replace equipment that consists of functionally equivalent components and specifications as the equipment being replaced, which does not cause any change to location or design from the formerly used equipment.

(vi) Changes in procedures for cleaning or decontamination of facility equipment or structures.

(vii) Changes in tanks used for storage of materials utilized as part of the operation of the facility such as fuel, motor oil, and water without a change in location.

(viii) Changes in the rental company or location of where the back-up equipment may be sought.

- (ix) Replacement of an existing environmental or operational monitoring point that has been damaged or rendered inoperable, without change to location or design of the monitoring point.
- (x) Updated changes to other regulatory agency documents that are included by reference in a RFI only.
- (xi) Updated changes to other regulatory agency documents that are included by reference in a RFI only.
- (xii) Changes in containers used for temporary storage of materials separated for recycling.
- (xiii) Change in narrative information (e.g., background information) outside the permitted boundary.
- (xiv) Change to facility signage wording.
- (xv) Changes to improve personnel protective equipment and other safety procedures.
- (xvi) Changes to traffic patterns on site that do not affect off-site traffic, and/or adjacent improved properties.
- (xvii) Adjacent land use map.
- (xviii) Change in location of facility records.
- (xix) Changes in name, address, or phone number of contact in post-closure plan.
- (xx) Changes to equipment maintenance operations associated with the operation of the facility.
- (xxi) Acquisition of property adjacent to the facility if not used for solid waste activities.
- (xxii) Updated changes to documents that are included by reference in a permit or RFI.
- (xxiii) Regulation re-numbering as referenced in RFI.

Changes that could be significant in subsection (a)(4) – Revised Permit include the following:

- (A) Increase in maximum amount of permitted tonnage of all waste received.
- (B) Increase in the facility's permitted acreage.
- (C) Increase in the permitted hours of operation.
- (D) For landfill, increase in permitted disposal footprint and/or permitted (final grade) the maximum overall height.

II. PUBLIC NOTICE AND INFORMATIONAL MEETING REQUIREMENTS

Notice Requirements

Comments:

1. Section 21660(a)(2) - Commenters said clarification should be added that the EA will mail a written notice on a pending application to everyone requesting it “within 10 to 15 days prior to taking action.”
2. Section 21620 flow diagram and Section 21660.1(b) - Commenters said the 10-day notice for RFI amendments and modified permits should follow and not precede EA acceptance of the application.
3. Section 21660.1 - Commenters said additional noticing for RFI amendments should be deleted.
4. Section 21660.1 – Commenter said if the regulations continue to require that the EA provide some form of notice for changes less than significant, the regulations should be amended (or supplemented with policy) so that EAs know what to say about how comments can be submitted. There is currently no provision in the regulations to answer that question; the assumption appears to be that if an EA does not conduct an informational meeting, it will either accept comments in some other way, or will provide notice of a comment opportunity that the Board will provide.
5. Section 21660.1(b) - Commenters said a new posting requirement should be added for RFI amendments and modified permits that the EA prepare a notice that is posted by the operator in a local newspaper of general circulation.
6. Sections 21660.3(b)(4) and 21660.4(b)(4) - Commenter said specific language should be added to allow the EA to require increased public noticing beyond 300 feet of the property boundary if there is a significantly impacted community.
7. Sections 21660.1(b), 21660.2(c)(3), 21660.3(b)(4), and 21660.4(b)(4) – Commenter said translation should be required in notices as primary source of outreach.

Approach:

1. Add to the EA noticing requirement for new, revised, and modified permits, and RFI amendments in Section 21660(a)(2) that the EA shall mail the written notice of an application to everyone who has submitted a written request as follows:
 - o For RFI Amendment: “within 5 days after the EA approves the amendment”
 - o For New, Revised, and Modified Permits: “within 5 days from receiving the application”
2. Change the EA noticing requirement for RFI amendments in Section 21660.1(a) from “10 days prior to the EA accepting the application” to posting the notice “within 5 days of the EA approving the application for at least 10 days.”
3. Remove modified permits from Section 21660.1 and add it to Section 21660.3 Notice for New and Revised Permit Applications.
4. Retain the additional noticing requirements for RFI amendments in Section 21660.1.
5. Simplify the content of the notice in Section 21660.1(a) by combining requirements (5) that it include the “date by which the EA is required to act upon the RFI amendment or the solid waste facilities permit modification” and (6) the “EA finding or preliminary finding pursuant to Section 21665(c)(1)” so that it reads: “Date application was approved by the EA and EA’s finding pursuant to Section 21665(c).”
6. Develop guidance after the regulations are adopted for the EA on how to handle comments received in writing or orally related to noticing of RFI amendment or modified permits.

7. Do not add new requirement to Section 21660.1(b) to post RFI amendment in local newspaper, but add as an additional measure that may be undertaken by the EA for new, revised, and modified permits in Sections 21660.2(c)(3), 21660.3(b)(4), and 21660.4(b)(4).
8. Add as an additional measure that the EA may undertake in Sections 21660.2(c)(3), 21660.3(b)(4), and 21660.4(b)(4) for new, revised and modified permits, "additional noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site."
9. Do not change the proposed regulations to require translation; leave the decision on whether the notice needs to be translated up to the EA.

Rationale:

Sending written notice – Staff agrees with adding in Section 21660(a)(2) a "time certain" for EAs to send a written notice to people who have requested this information. Requiring the EA to mail the written notice five days after receiving the application for modified, revised, and new permits to those that have requested such a notice in writing, gives the EA 5 days to write the notice while clarifying when the notice should be provided. For RFI amendments, the EA is required to mail the written notice within 5 days of approving the application for an RFI amendment. Ideally all noticing protocols should be similar, but because RFI amendments are processed differently than permits, a different noticing process is proposed for RFI amendments than for new, revised, and modified permits. In particular, RFI amendments have a shorter, 30-day process time whereas new, revised and modified permits have a 180-day process; RFI amendments are approved by the EA without Board concurrence whereas new, revised, and modified permits require Board concurrence; and RFI amendments must be consistent with CEQA, State minimum standards, and the terms and conditions in the current permit whereas new, revised and modified permit applications might not meet some of these criteria and would require additional review and findings from the EA and Board.

Posting notice for RFI amendments - The proposed regulations originally combined the noticing requirements for RFI amendment and modified permits together in Section 21660.1, but because of the shorter processing time for RFI amendments, it is evident that this combination is not workable. As a result, staff has moved the language related to modified permits from this section and added it to Section 21660.3 Notice for New and Revised Permit Applications, where the processes are consistent. Originally the notice for the RFI amendment was to be a pre-notice that would take place before the EA took action, similar to the pre-notice for modified, revised, and new permits. However, because of the short, 30-day process time for RFI amendments, including acceptance/rejection and approval/denial of the application, staff determined that the appropriate time for the EA to send the written notice pursuant to Section 21660(a)(2) or post the notice pursuant to Section 21660.1 was after the EA had accepted/approved the application. This will reduce the need to notice applications that are determined to be incomplete or incorrect or where the EA determined that the findings could not be made and the application was denied. In the case of posting the notice, the EA would be required to post the notice for at least 10 days, which provides the public with the same number of days of noticing as what was proposed earlier.

Additional RFI amendment noticing requirements - The proposed regulations are trying to balance the level of notice with the view that there are changes that are less than significant changes in design and operation that are consistent with the permit terms and conditions. The new noticing requirements proposed in the draft regulations for RFI amendments are less than those for a modified, revised or new permit and consist of the operator posting a notice at the facility entrance and the EA posting the notice on the local jurisdiction's public notice board or EA's web site or Board's web site or the operator's web site. While RFI amendments tend to be administrative in nature, there have been instances where the changes were of greater concern, such as an amendment to an RFI at a landfill that triggered AB 1497. Also, based on previous years, the small number of RFIs amended statewide (62 in 2002 and 86 in 2003) does not appear to be large enough to warrant deleting the minimal noticing requirements. The additional public noticing in Section 21660.1 should be retained to increase the opportunity for the public to be better informed of changes proposed by operators, which is one of the key elements in addressing environmental justice and adheres with Cal-EPA's Intra-Agency Environmental Justice Strategy's goals: 1) ensure meaningful public participation and promote community capacity-building to allow communities to effectively participate in environmental decision-making processes, and 2) Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Simplifying the content of the notice by combining in Section 21660.1(a) requirement (5) that it include the "date by which the EA is required to act upon the RFI amendment or the solid waste facilities permit modification" and (6) the "EA finding or

preliminary finding pursuant to Section 21665(c)(1)” so that it reads: “Date application was approved by the EA and EA’s finding pursuant to Section 21665(c),” should help focus the content to the notice to its essential elements and help to reduce workload. Guidance will be developed for the EA after the regulations are adopted on how to handle comments received in writing or orally related to noticing of RFI amendment or modified permits.

Additional measures that may be undertaken - Because staff is trying to balance the level of notice with the view that there are changes that are less than significant changes in design and operation that are consistent with the permit terms and conditions, posting all such changes in a local paper can be expensive and doesn’t seem equivalent to the level of change for an RFI amendment. However, adding this as an additional measure that may be undertaken by the EA for new, revised, and modified permits in Sections 21660.2(c)(3), 21660.3(b)(4), and 21660.4(b)(4) makes sense. Right now, the proposed regulations require for new and revised permits that the EA comply with Government Code Section 65091, which requires the EA to notice the owners of property within 300 feet of the property or to post a notice in a newspaper of general circulation if there are more than 1,000 owners of property within 300 feet of the property. It also makes sense to add as an additional measure for new, revised and modified permits that the EA may undertake “additional noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site.” Communities adjacent to landfills usually are not within 300 feet of the property boundary because of buffer zones or planned green areas to set back the community. The proposed regulations already allow the EA to undertake as an additional measure providing multilingual notice and translation to increase public notice for new, revised, and modified permits. This approach is consistent with AB 1497, which does not require translation, only that the EA consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited English (not non-English) speaking populations.

Draft Regulations:

Section 21660 Written Notice of Application to Individuals Requesting in Writing

(a) The following provisions shall be applied to applications for new solid waste facilities permits, revised and modified solid waste facilities permits, and RFI amendments.

(a1) The EA shall maintain a current list of all pending applications at its offices. The list shall be publicly available during normal business hours.

(b2) The EA shall mail written notice of an application to every person who has submitted a written request for such notice within 5 days after the EA approves the amendment and within 5 days from the EA receiving the application for new, revised and modified permits.

(e3) Written public comments on an application shall be retained by the EA.

Section 21660.1 Notice of RFI Amendment Applications

(a) ~~Content of Notice for RFI Amendment and Permit Modification Applications~~

At a minimum, the public notice prepared pursuant to §21660.1(b) for RFI amendment ~~and solid waste facilities permit modification~~ applications approved by the EA shall include the following information:

(1) Name and location of facility applying for the RFI amendment ~~or solid waste facilities permit modification.~~

(2) Solid waste facilities permit/facility number.

(3) Date RFI amendment ~~or solid waste facilities permit modification~~ application was received by the EA.

(4) Description of the change proposed as an RFI amendment ~~or solid waste facilities permit modification.~~

(5) Date ~~by which~~ the EA approved ~~is required to act upon~~ the RFI amendment and finding pursuant to §21665(c) ~~or the solid waste facilities permit modification.~~

~~(6) EA finding or preliminary finding pursuant to §21665(c)(1).~~

~~(7) (6) Information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA approval of the RFI amendment) pursuant to Public Resources Code §44307.~~

~~(8) (7) Statement indicating where additional information about the approved application is available (date, time, and location) for public review.~~

~~(9) (8) EA and operator contact information.~~

(b) Publication of Notice for RFI Amendment and Permit Modification Applications

~~In addition to the EA requirements in §21660(a), the operator shall prepare and post within 5 days of the EA approving at the time the application for at least 10 days is submitted to the EA a temporary notice at the facility entrance that meets the requirements of §21660.1(a); in addition the EA shall ensure that notices are distributed for RFI amendment and solid waste facilities permit modification applications as specified below that contain information pursuant to §21660.1(a). The publication (in hard copy or electronically) shall occur at one or more of the following locations within 5 days of the EA approving the application for at least 10 days prior to EA taking action pursuant to §21666(a) or §21650(a):~~

~~(1) Posting of notice prepared and posted by the EA on EA's or the Local Jurisdiction's public notice board, if one exists, or~~

~~(2) Posting of notice prepared by the EA and posted by the operator on facility's web site, if one exists, or~~

~~(3) Posting of notice prepared and posted by the EA on EA's web site, if one exists, or~~

~~(4) Posting of notice prepared by the EA and posted by the Board on the Board's web site, provided that the EA provides the Board with a copy of the notice 245 days in advance to approving accepting the application in order to allow the Board time for processing and posting of the notice.~~

Section 21660.3 Notice of New, Revised and Modified Permit Applications

§ 21660.3 Notice of New, and Revised and Modified Permit Applications and EA Conducted Informational meeting.

(a) Contents of Notice of New, and Revised and Modified Permit Applications and EA Conducted Informational Meeting

~~The public notice prepared pursuant to §21660.3(b) for new, or revised or modified solid waste facilities permit applications shall include the following information:~~

~~(1) Name and location of the facility or proposed facility.~~

~~(2) Solid waste facilities permit/facility number (for existing permits).~~

~~(3) Purpose of the public informational meeting for new and revised permits.~~

~~(4) Date the EA accepted the solid waste facilities permit modification/revision/new permit application.~~

~~(5) Description of the solid waste facilities permit modification/revision(s)/new permit.~~

~~(6) EA's preliminary determination pursuant to §21665 for modified and revised permits.~~

~~(7) EA finding pursuant to §21665(c)(1).~~

~~(8) (7) Statement indicating where additional information about the application is available (Date, time, and location) for public review.~~

~~(9)~~ (8) Date, time, location of the public informational meeting for new and revised permits.

~~(10)~~ (9) Options for submitting comments.

~~(11)~~ (10) Information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA issuance or denial of a modified, revised, or new permit) pursuant to Public Resources Code §44307.

~~(12)~~ (11) EA and operator contact information.

(b) Notice Distribution for New, ~~and~~ Revised and Modified Permit Applications and EA Conducted Informational Meeting

In addition to the requirements in §21660(a) the EA shall prepare a meeting notice that contains information pursuant to §21660.3(a) and distribute the notice as follows:

(1) Posting of notice prepared and posted by the EA on the EA's or the Local Jurisdiction's public notice board, if one exists, and

(2) The EA shall post the notice in compliance with Government Code §65091, subdivisions (a)-(c), inclusive and with Public Resources Code §44004, subdivisions (h)(1)(A-C) for new and revised permits, except for modified permits the EA shall post the notice within 5 days of finding the permit application complete and correct pursuant to §21650, and

(3) The EA shall mail or deliver the notice 10 days prior to the date of the informational meeting to the governing body of the jurisdiction within which the facility is located and to the State Assembly Member and the State Senator in whose districts the facility is located for new and revised permits, except for modified permits the EA shall post the notice within 5 days of finding the permit application complete and correct pursuant to §21650, and

(4) The EA may undertake additional measures to increase public notice and to encourage attendance by any persons who may be interested in the facility that is the subject of the informational meeting, including but not limited to additional posting at the facility entrance, noticing beyond 300 feet if the nearest residence or business is not within 300 feet of the site, posting in a local newspaper of general circulation, and multilingual notice and translation, and multiple meeting dates, times and locations.

Content of Notice Requirements

Comments:

1. Section 21660.1(a)(5) – Commenter said the inclusion of the “date by which the EA is required to act upon the RFI amendment or the solid waste facilities permit modification” is problematic and should be removed.
2. Section 21660.1(a)(6) – Commenter said a fundamental problem with this requirement is if the publication is required to be posted 10 days prior to an EA taking action, how can the publication contain an EA finding?
3. Sections 21660 and 21660.1(a)(7) - Commenters said the noticing requirement on the availability of appeals pursuant to PRC 44307 should be deleted since there could not have been an alleged failure of the LEA to act as required by law or regulations.

Approach:

1. Change the content of the EA noticing requirement for RFI amendments by combining requirement (5) that it include the “date by which the EA is required to act upon the RFI amendment or the solid waste facilities permit modification” and (6) the “EA finding or preliminary finding pursuant to Section 21665(c)(1)” so that it reads: “Date application was approved by the EA and EA’s finding pursuant to Section 21665(c).”
2. Remove language on modified permits from Section 21660.1 and add it to Section 21660.3 Notice for New and Revised Permit Applications.
3. Add language to clarify that noticing on the availability of an appeal process pursuant to Public Resources Code Section 44307 applies to formal discretionary action taken by the EA with regard to an application (i.e., approving RFI amendments or later issuing or denying a modified, revised, or new permit).
 - For RFI amendments, Section 21660.1(a)(7), would be edited to read, “information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA approval of the RFI amendment) pursuant to Public Resources Code Section 44307.”
 - For New, Revised, and Modified Permits, Section 21660.3(a)(11), would be edited to read, “information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA issuance or denial of a modified, revised, or new permit) pursuant to Public Resources Code Section 44307.”
 - For New and Revised Permits Substituted meetings, Section 21660.4(a)(10), would be edited to read, “information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA issuance or denial of a modified, revised, or new permit) pursuant to Public Resources Code Section 44307.”

Rationale:

Content change for RFI amendment noticing – Staff agrees with changing the content in Section 21660.1(a) of the EA noticing requirement by combining requirement (5) that it include the “date by which the EA is required to act upon the RFI amendment or the solid waste facilities permit modification” and (6) the “EA finding or preliminary finding pursuant to Section 21665(c)(1)” so that it reads: “Date application was approved by the EA and EA’s finding pursuant to Section 21665(c).” Because of the short, 30-day process time for RFI amendments, including acceptance/rejection and approval/denial of the application, staff concluded that the appropriate time for the EA to post the notice is within 5 days of the EA accepting/approving the application. Thus, the EA would not be providing information prior to taking action, but after finding the application meets the requirements of Section 21665(c) and is approved. This will reduce the need to notice applications that are determined to be incomplete or incorrect or where the LEA determined that the findings could not be made and the application was denied.

Modified permit change in noticing - The proposed regulations originally combined the noticing requirements for RFI amendment and modified permits together in Section 21660.1, but because of the processing differences between the two and because modified permits are processed similar to new and revised permits, staff has moved modified permits from this section and added it to Section 21660.3 Notice for New and Revised Permit Applications.

Availability of appeal - Based on the comments received, staff has added language to clarify that the noticing on the availability of an appeal process pursuant to Public Resources Code Section 44307 applies only to formal discretionary action taken by the EA with regard to the application (i.e., approving RFI amendments or later issuing or denying a modified, revised, or new permit). Because the notice for an RFI amendment would be distributed after the EA has already approved the amendment, the notice would announce that the EA's approval is subject to a PRC 44307 appeal in Section 21660.1(a)(7). The notice for new, revised, or modified permits would be announcing that at a later date when the EA issues or denies the permit, this formal action would be subject to a PRC 44307 appeal in Section 21660.3(a)(11) and Section 21660.4(a)(10) for substituted meetings. This should address the concern that the public could mistakenly think that non-formal actions taken by the EA would be subject to a PRC 44307 appeal.

Draft Regulations:

For content change for RFI amendment noticing, please see Draft Regulations under Notice Requirements, Section 21660.1(a).

For modified permit change in noticing, please see Draft Regulations under Notice Requirements, Sections 21660.1 and 21660.3.

For availability of appeal in noticing, please see Draft Regulations under Notice Requirements:

- For RFI amendments see Section 21660.1(a)(6)
- For new, revised, or modified see Section 21660.3(a)(10)

Section 21660.4(a)(10) Substitute Meetings Availability of Appeals

§ 21660.4 Substitute Meetings for EA-Conducted Informational Meetings.

The EA may substitute the meeting required under §21660.2 with a previously held public meeting on the same project, as described in the solid waste facilities permit application package and associated CEQA documents, if the public meeting took place within one year prior to the date the EA accepted the application as complete and correct, and the applicant does not object to such use in the permit application cover letter pursuant to Section 21570(d). In order for this substitution to be valid, the EA must have been involved in the previously held meeting to the degree of being present, recognized by the presider of the meeting, and available to answer questions regarding solid waste facilities permitting specifications from the public, other entities, or officials in attendance at the meeting.

(a) Content of Notice of New and Revised Permit Applications Using Substituted Meeting or Hearing

When a previously held public meeting is to be used to substitute for the meeting requirements in §21660.2 the EA shall prepare and distribute a notice pursuant to §21660.4(b) regarding the application for a new or revised solid waste facilities permit as follows:

- (1) Name and location of the facility or proposed facility.
- (2) Solid waste facilities permit/facility number (for existing permits).
- (3) Date and purpose of previously held public informational meeting.
- (4) Date the EA accepted the solid waste facilities permit revision/new permit application.
- (5) Description of the solid waste facilities permit revision(s)/new permit.
- (6) EA's preliminary determination pursuant to §21665.
- ~~(7) EA finding pursuant to §21665(e)(1).~~

~~(6)~~ (7) Statement indicating where additional information about the application is available (date, time, and location) for public review.

~~(7)~~ (8) Options for submitting comments, if applicable.

~~(10)~~ (9) Information on the availability of appeals regarding formal discretionary action taken by the EA on an application (i.e., EA issuance or denial of a revised or new permit) pursuant to Public Resources Code §44307.

~~(11)~~ (10) EA and operator contact information.

Informational meeting

Comments:

1. Section 21563(d)(4) - Commenter said that informational meetings should be the same as a public hearing and require the EA to respond to comments as provided in Government Code Section 11346.8.
2. Section 21660 - Commenter said new permits should not include informational meeting requirement.
3. Sections 18104.2(e) and 18105.2(f)(2) - Commenters said informational meetings for registration and standardized permits should not be required since the EA can't add site specific conditions to permits, and registration and standardized permits can't be revised and require a new permit (informational meeting) every time.
4. Section 21660.4 – Commenter said EA should not be able to use substitute meeting.
5. Section 21660.2(c)(1) - Commenters said the 5-mile restriction for the informational meeting location should be reduced to 1-mile.

Approach:

1. Do not add requirement to Section 21563(d)(4) that informational meeting include EA responding to comments.
2. Add to Section 21650(g)(5) that the EA include, in addition to written public comments received on a pending application, "... and a summary of comments received at the informational meeting that are specific to EA jurisdiction, and, where applicable, any steps taken by the EA relative to those comments." This requirement would only apply to full permits in Title 27 and not to registration and standardized permits in Title 14.
3. Develop guidance after the regulations are adopted for the EA on how to handle comments received in writing or orally at the informational meeting.
4. Continue to require informational meeting for new permits.
5. Delete the requirement in Section 18104.2(e) for new registration permits and in Section 18105.2(f)(2) for standardized permits to have an informational meeting. Continue to require noticing for registration and standardized permits, which would be the same as for a substitute meeting for a full permit.
6. Retain the use of substitute meetings by the EA in Section 21660.4, but add that the EA can only use a substitute meeting in place of holding an informational meeting if the operator does not object pursuant to Section 21570(d) to such use in the permit application cover letter.
7. In Section 21660.2(c)(1), reduce the 5-mile restriction for the information meeting location to 1 mile, so the language would read: The meeting shall be held in a suitable location not more than "1 mile" from the facility that is the subject of the meeting; provided that, if no suitable and available location exists within "1 mile" of the facility, as determined by the EA, the EA may designate an alternative suitable location that is as close to the facility as reasonably practical."

Rationale:

Comments at informational meeting - The informational meeting is strictly informational in that information is shared both ways from EAs and from attendees. No decision is made at the meeting and the EA is not required to respond to comments. Staff is not aware of any general requirement in state law that agencies holding public hearings provide formal responses to speakers' comments (Government Code Section 11346.8, which applies to public hearings held as part of the State's formal rulemaking process, is an exception). State agencies are required to follow this process in the development of regulations. However, to provide the Board with a better understanding of comments that were received by the EA at the informational meeting as well as any written comments received, and, where applicable, any steps that were taken by the EA in response to those comments, staff has added a requirement in Section 21650(g)(5) that

the EA include with the accepted application package that is submitted to the Board, in addition to written public comments received, "and a summary of comments received at the informational meeting that are specific to EA jurisdiction, and, where applicable, any steps taken by the EA relative to those comments." Board staff is already basically asking EAs for this information now in writing the agenda item for the Board meeting. Guidance will be developed for the EA after the regulations are adopted on how to handle comments received in writing or orally at the informational meeting.

New full permits - Informational public hearings are already required for new Construction, Demolition and Inert Debris (CDI) permit applications under current regulation (Title 14 sections 17383.10 and 17388.6). The Office of Administrative Law approved these regulations in 2003. The Board directed staff to apply the CDI regulatory requirements to other solid waste facilities in order to provide consistency among different types of solid waste facilities. The proposed regulations in Section 21660 are consistent with the CDI regulations and the Board's direction. The informational meeting requirement for new permits is not a duplication of the land use public hearing process or CEQA. Land use entitlements are not always issued for every solid waste facility, and public hearings either are not held in every case, were held years ago, or may be too broad in scope and may not address the issues associated with a solid waste facility. In these cases, the informational meeting would not be duplicating a land use hearing. Where a local land use hearing has been held, is not dated, and is not too broad in scope, the proposed regulations allow the EA to substitute, for a new informational meeting, a comparable public hearing that was held within the year. In the case of CEQA, not every solid waste facilities permit will have gone through a CEQA process. Also, the CEQA process includes public notice requirements, but does not include a public hearing.

New registration and standardized permits - Continue to require noticing for new registration and standardized permits, but delete the requirement for informational meetings in Sections 18104.2(e) and 18105.2(f)(2). Both registration and standardized permits are for less complex facilities than facilities needing a full permit, and as such, the EA does not add site specific conditions to the permits. Hence, every time there is a change to the permit, a new permit is required and the existing permit cannot be modified or revised. This means even minor changes to a permit could require an informational meeting if the requirement is not deleted from the proposed regulations. In the case of registration permits, they are ministerial and do not require Board concurrence. The EA has 30 days to find the application for a registration permit complete and correct, and to accept it for filing, leaving little time for holding an informational meeting. Continuing to require noticing, on the other hand, does not interfere with the shorter process times while still providing the public a heads-up about upcoming changes at a solid waste facility. The number of new permits that would require noticing would be small. There are not many registration permits since they are mainly transfer stations that are small facilities (about 100 tons or 400 cu yds). There are not many standardized permits as well. There were 17 new registration permits in 2004 and 4 in 2005. Staff anticipates that EAs will review 20 registration permits and 3 standardized permits in 2006, and 32 registration permits and 13 standardized permits in 2007. The level of noticing would be the same as for a substitute meeting for a full permit, including notifying owners of property within 300 feet of the subject property, or posting in a newspaper of general circulation if there are more than 1,000 owners of property within 300 feet.

Substitute meeting - Substitute meetings ensure that the public is involved in the process. Under the proposed text, a meeting cannot be substituted unless it is substantially the same as the LEA meeting: it has to be a public meeting on the same project; held within the year after the EA accepts the application as complete and correct; and the EA has to have attended the previously held hearing/meeting, be recognized by the presider of the meeting, and available to answer questions. Requiring EA presence at the previously held public hearing to answer questions that only the EA can answer with regard to a proposed new solid waste facility or facility change is consistent with the intent of holding an informational meeting, which is to allow the public to be better informed of changes proposed by the operator. However, if an operator does not want the EA to use a substitute meeting in place of an informational meeting, the operator can raise its objection in the permit application cover letter pursuant to Section 21570(d) and the EA will not be able to use a substitute meeting.

5-mile restriction – Staff agrees with reducing the 5-mile restriction on location for informational meetings in Section 21660.2(c)(1) down to 1 mile from the facility that is the subject of the meeting. Reducing the location down to 1 mile should help to ensure that the meeting location is conveniently located in urban areas, such as in Southern California. This should help facilitate attendance by residents, including those that rely on public transportation. If a suitable and available location cannot be found within 1 mile, which for

example may be the case in some rural situations, the EA can designate an alternative suitable location that is as close to the facility as reasonably practical.

Draft Regulations:

Section 21563(d)(4) Informational Meeting: Comments

No change to require informational meeting to include EA responding to comments.

Section 21650(g) EA Summary of Comments At Informational Meeting

(5) Any written public comments received on a pending application and a summary of comments received at the informational meeting that are specific to EA jurisdiction, and, where applicable, any steps taken by the EA relative to those comments. Subsequent to the transmittal of the proposed solid waste facilities permit, the EA shall, within five (5) days of receipt, provide a copy of any additional written public comments to the CIWMB.

Section 21660 New Permit Informational Meeting Requirement

No change to requirement that informational meeting be conducted for new permits.

Section 18104.2(e) Registration Permit Notice and Informational Meeting Requirement

~~e) The enforcement agency shall provide notice and conduct an informational meeting pursuant to Title 27 Sections 21660.2 and 21660.3, or~~ pursuant to Title 27 Section 21660.4 prior to issuance of the solid waste facilities permit.

Section 18105.2(f)(2) Standardized Permit Notice and Informational Meeting Requirement

~~2) The enforcement agency shall provide notice and conduct an informational meeting pursuant to Title 27 Sections 21660.2 and 21660.3, or~~ pursuant to Title 27 Section 21660.4.

Section 21660.4 Applicant Objection to Substitute Meeting

§ 21660.4 Substitute Meetings for EA-Conducted Informational Meetings.

The EA may substitute the meeting required under §21660.2 with a previously held public meeting on the same project, as described in the solid waste facilities permit application package and associated CEQA documents, if the public meeting took place within one year prior to the date the EA accepted the application as complete and correct, and the applicant does not object to such use in the permit application cover letter pursuant to Section 21570(d). In order for this substitution to be valid, the EA must have been involved in the previously held meeting to the degree of being present, recognized by the presider of the meeting, and available to answer questions regarding solid waste facilities permitting specifications from the public, other entities, or officials in attendance at the meeting.

Section 21570(d) Applicant Objection to Substitute Meeting in Application Package

(d) The application package shall require that information be supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility. The application package shall require, among other things, that the applicant and the owner give the address at which process may be served upon them. The applicant shall include in the cover letter for the application if the applicant would object to the use of a substitute meeting in place of an informational meeting being conducted by the EA pursuant to Section 21660.2.

Section 21660.2(c)(1) Informational Meeting 1 Mile Location Requirement

(c) The informational meeting shall meet the following criteria:

(1) The meeting shall be held in a suitable location not more than one (1) mile ~~five (5) miles~~ from the facility that is the subject of the meeting; provided that, if no suitable and available location exists within one (1) mile ~~five (5) miles~~ of the facility, as determined by the EA, the EA may designate an alternative suitable location that is as close to the facility as reasonably practical.

III. RELATIONSHIP OF SWFP TO LAND USE ENTITLEMENTS

Comments:

1. Section 21563(d)(2) – Commenters said either the proposed changes to the definition for "correct" should be deleted or the operator should be required to include with the application a letter from the planning agency verifying that the application is consistent with local land use entitlements.

Approach:

1. Restore the definition for "correct" in Section 21563(d)(2) back to the original text by deleting: "This does not include verifying for correctness information contained in the land use and/or conditional use permit which the applicant submits pursuant to §21570(f)(9)."
2. Add to Section 21570(e), at the end of the paragraph so the last sentence would read: "The applicant, owner of the facility, or both, shall supply additional information as deemed necessary by the EA, including but not limited to land use entitlements for the facility."
3. Delete in Section 21570(f), the requirement that the application include "(9) Land Use and/or conditional use permits."
4. Leave the proposed change in Section 21570(a) and (b) that the operator send "one copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located."
5. Add a second paragraph to the Note at the end of Section 21650 stating that when writing conditions pursuant to 21650(i) the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment, and any terms and conditions of the permit are consistent with the EA's Enforcement Program Plan, including the processing of permits relative to local land use entitlements.

Rationale:

Based on the comments received that the proposed regulations must avoid promoting/creating any conflict between the host jurisdiction's land use permit/entitlement and the Solid waste Facility Permit, staff has changed the proposed regulations from focusing on EA acceptance of a complete and correct permit application package to the actual drafting of permit terms and conditions by the EA, which is when the EA considers other entitlements, permits, and approvals when writing the permit.

The existing requirement in Section 21570(f)(9), that the operator include as part of a complete and correct application package a copy of land use entitlements for the facility, is deleted since these documents are not always issued for all facilities or may be in process at the time the application for a SWFP is received by the EA. This has resulted in long delays in the processing of some permits. The proposed language in Section 21563(d)(2), that the definition of "correct" did not include the EA verifying for correctness information contained in the land use and/or CUP, has been deleted for the same reason.

Rather than holding up processing of the application, it makes more sense for the EA to consider local use entitlements when drafting permit terms and conditions. To address this, a note has been added at the end of Section 21650 to indicate that the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment, and any terms and conditions of the permit are consistent with the EA's Enforcement Program Plan, including the processing of permit relative to local land use entitlements.

Language has also been added to the existing requirement in Section 21570(e) that the operator supply additional information as deemed necessary by the EA, to include land use entitlements for the facility. The additional information would not be part of the "complete and correct" finding made by the EA.

The proposed regulations still include the requirement that the operator send a copy of the permit application to the local planning department so the planning department is aware of the proposal and can take appropriate action as necessary.

Draft Regulations:

Section 21563(d)(2) Definition for Correct

(2) "Correct" means all information provided by the applicant regarding the solid waste facility must be accurate, exact, and must fully describe the parameters of the solid waste facility. ~~This does not include verifying for correctness information contained in the land use and/or conditional use permit which the applicant submits pursuant to §21570(f)(9).~~

Section 21570(e) Information to EA on Land Use Entitlements

(e) All information in the application package shall be certified by the applicant and the owner of the site as being true and accurate to the best knowledge and belief of each. The applicant, owner of the facility, or both, shall supply additional information as deemed necessary by the EA, including but not limited to the land use entitlements for the facility.

Section 21570(f) Complete and Correct Application Package: Land Use Entitlements

(f) A complete and correct application package shall include, but not necessarily be limited to, the following items:

(1) Application For Solid Waste Facilities~~y~~ Permit/Waste Discharge Requirements Form (CIWMB E-1-77, Version 8-04, Appendix 1); and

(2) Complete and correct Report of Facility Information. In the case of disposal sites, this will be a Report of Disposal Site Information (RDSI) in the format of a JTD or a Disposal Site Facility Plan or Disposal Facility Report in the format of a JTD; and

(3) California Environmental Quality Act (CEQA) compliance information as follows:

(A) Evidence that there has been compliance with the CEQA, Division 13 (commencing with §21000) of the Public Resources Code, regarding the facility; or

(B) Information on the status of the application's compliance with the CEQA regarding the facility, including the proposed project description. Once there has been compliance with the CEQA regarding the facility, evidence of compliance shall be submitted to the EA; and

(4) Any CEQA Mitigation Monitoring Implementation Schedule; and

(5) Conformance finding information, including one of the following:

(A) Until a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include statements that: the facility is identified and described in or conforms with the County Solid Waste Management Plan, or otherwise complies with Public Resources Code §50000; and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with Public Resources Code §50000.5; or

(B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the application shall include a statement that: the facility is identified in either the countywide siting element, the nondisposal facility element, or in the Source Reduction and Recycling Element for the jurisdiction in which it is located; or, that the facility is not required to be identified in any of these elements pursuant to Public Resources Code §50001; and

(6) For disposal sites, completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§21780, 21865, and 21890 (Subchapter 4 of this Chapter); and

[Note: The operator has the option of submitting the preliminary closure plan with the JTD, in which case the EA, RWQCB, and CIWMB would review it at the same time. If deemed complete by the reviewing agencies, the solid waste facilities permit application package could then be accepted for filing if all other information in the JTD is accepted by the EA. Or the operator can submit a stand alone preliminary closure plan to be deemed complete by reviewing agencies before the application package is submitted to the EA. For CIWMB purposes, all final closure/postclosure plans are stand alone documents but can be processed jointly with a proposed solid waste facilities permit revision as long as the final plan is determined complete prior to approval of the proposed solid waste facilities permit. The JTD Index prepared for the EA should show where each closure requirement is addressed in the closure/post-closure plan.]

(7) For disposal sites, current documentation of acceptable funding levels for Financial Assurance Mechanism (in accordance with Chapter 6, Division 2); and

(8) For disposal sites, current documentation of compliance with operating liability requirements in accordance with Chapter 6;

~~(9) Land use and/or entitlements for the facility (e.g., Conditional Use Permits or zoning ordinance);~~

Section 21570(a) and (b) Application Form to Local Land Use Agency

No change to the requirement that the operator send a copy of the application form to the director of the local agency that oversees local land use planning for the jurisdiction in which the site is located.

Section 21650(i) Note EA's Written Conditions in Permit

~~(h)~~ The proposed solid waste facilities permit shall contain the EA's conditions ~~the EA proposes to include in the permit~~. The proposed solid waste facilities permit shall not contain conditions pertaining solely to air or water quality, nor shall the conditions conflict with conditions from WDRs issued by the RWQCB.

[Note: The process to obtain a full solid waste facilities permit SWFP might not include the RWQCB if the facility is other than a landfill or disposal site. Therefore, EA submittals of forms and documents to the RWQCB will be made if applicable to the type of facility.

When writing conditions pursuant to 21650(i) the EA should take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment, and any terms and conditions of the permit are consistent with the EA's Enforcement Program Plan, including the processing of permits relative to local land use entitlements]